

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO
RICO,

as representative of

THE COMMONWEALTH OF PUERTO
RICO, et al.,

Debtors.

PROMESA

Title III

No. 17-bk-3283-LTS

(Jointly Administered)

DECLARATION OF JOHN GAVIN

I, John Gavin, hereby declare:

1. I am a Managing Director of Citigroup Global Markets Inc. (“Citi”), investment banker and financial advisor to the Financial Oversight and Management Board for Puerto Rico (“Board”) and the Citi signatory to Citi’s initial engagement letter and each amendment thereto. I am submitting this declaration pursuant to the order entered June 22, 2023 (ECF Doc. #24632) and in support of Citi’s accompanying amended fee application.

Initial Engagement dated January 27, 2017

2. Citi was engaged following a competitive process.

3. Under its initial engagement letter, a true copy of which is attached as Exhibit 1,

Citi agreed to:

1. Evaluate the Commonwealth’s [defined to include its agencies, authorities, public corporations and instrumentalities] fiscal situation, and interface with the Board and its other professional advisors in connection therewith;
2. Review and evaluate the Commonwealth’s capital structure and advise the Board on possible restructuring strategies (including developing financing and debt issuance models and alternatives) and in negotiating with the Commonwealth and the Commonwealth’s creditors;

3. Advise the Board on the Commonwealth's ability to access capital markets, including providing advice on market strategy;
 4. Undertake discussions on behalf of the Board with rating agencies, creditors and other third parties as requested by the Board; and
 5. Perform such other investment banking and financial advisory services as the Board may reasonably request in connection with this engagement, including providing testimony in connection with services provided under this engagement.
4. The initial engagement letter provided for Citi to be paid :
1. A fixed monthly retainer of \$250,000 ... plus
 2. A success fee equal to .0333% of the par amount of any bonds (A) issued by the Commonwealth ... as part of a PROMESA-related restructuring ... excluding bonds issued in connection with a restructuring described under Clause B below, or (B) restructured as part of a PROMESA related restructuring (calculated by multiplying 0.000333 by the restructured bond par amount), in each case, without duplication, and subject in all cases to an aggregate success fee cap of \$10 million. A success fee shall be due and payable^[1] upon each successful closing of all or a portion of a debt restructuring ...

Amended and Restated Engagement Letter dated February 13, 2018

5. In the Fall of 2017, Citi and the Board began discussing expanding the scope of services to include strategic advisory and investment banking services relating to the Puerto Rico Electric Power Authority ("PREPA" or the "Company"), which could include identifying, evaluating and implementing various strategic or financial alternatives for PREPA.²

¹ The initial engagement letter and the attached amendments thereto separately acknowledge fees are subject to court approval as reasonable (under PROMESA § 316).

² Such services were not covered by the initial engagement letter, which contemplated payment of a success fee in relation to a debt restructuring.

6. These discussions culminated in execution of the amended and restated engagement letter dated February 13, 2018, a true copy of which is attached as Exhibit 2.

7. The amendment expanded the scope of services to include the following:

6. Citi will perform such strategic advisory and investment banking services for the Board as are customary and appropriate in identifying, evaluating and/or implementing various strategic or financial alternatives for the Company that the Board reasonably requests (collectively, the “Services”). Such Services will include providing advice on the structure and terms of a long-term concession agreement involving the Company’s power transmission and distribution assets as well as providing advice in connection with a potential “privatization” involving the Company’s power generation assets (each of which, for clarity, shall be deemed to constitute a “Transaction,” collectively “Transactions,” as defined below) ...

“Transaction” means, whether in one or a series of transactions, the sale, transfer or other disposition ... of all or a significant portion of the business, assets or securities of the Company, whether by way of a merger or consolidation, reorganization, restructuring, negotiated purchase, leveraged buyout, minority investment or partnership, collaborative venture or otherwise, long-term concession, lease agreement or operating agreement or similar “privatization” transaction, or any other extraordinary corporate transaction involving the Company.

8. In addition, the amendment provided for the following additional compensation:

3. [I]n connection with the Services [i.e., the additional PREPA-related services that included identifying, evaluating and implementing strategic financial alternatives for PREPA], an additional fixed monthly retainer of \$400,000 ... plus
4. [I]n connection with the Services, a cash fee in the amount of \$24 million, payable upon consummation of a Transaction(s) (provided that any amounts less than \$2.5 million already paid under the above Clause 3 shall be creditable against the amounts owed under this Clause 4 to the extent amounts under this Clause 4 are paid in full). Citi and the Board will work together to determine a mutually agreed upon allocation of the fee owed under this Clause 4 to any Transaction(s) that may occur.

9. In relation to negotiations over the above-described transaction fee, Citi submitted to the Board a Power and Utilities M&A Fee Precedents spreadsheet, a true copy of which is attached as Exhibit 3, which articulates its rationale as follows:

- Citi has proposed a success-based fee of \$24mm (relevant comparison numbers are Sellside / Total Fee). The fee is to be realized upon a board-approved restructuring of PREPA. Milestone payments may be considered per mutual agreement.
- At McKinsey & Company's estimated value range of \$4.9bn - \$10.6bn¹, the proposed success-based fee reflects approximately 0.23% - 0.49% of total estimated deal value.
 - At the low-end of the potential value range, the percentage of deal value (0.49%) is approximately equivalent to the mean of the precedent transaction (0.47%), and at the high-end of the potential value range, the percentage (0.23%) is well below both the mean and median statistics for precedent transactions (0.47% and 0.37% respectively)

¹ Reflects range of total estimated generation, transmission, and distribution reconstruction costs post-Hurricane Maria per a McKinsey & Company October 2017 report.

The above estimated value range is generally consistent with PREPA's April 2018 fiscal plan, a true copy of which is attached as Exhibit 4, which (at 19) estimated its total assets at \$9.4 billion and total liabilities at \$11.4 billion.

10. An updated spreadsheet was later provided to the Board, under cover of a memorandum highlighting work performed in relation to the PREPA transactions, a true copy of which is attached as Exhibit 5. The mean and median fee did not change in the updated spreadsheet.

Second Amended and Restated Engagement Letter dated February 16, 2019

11. Citi and the Board entered into a second amended and restated engagement letter dated February 16, 2019, a true copy of which is attached as Exhibit 6.

12. The amendment did not modify compensation on account of Services rendered as part of then-potential PREPA Transaction(s). Rather, it increased the fixed monthly retainer to \$900,000, from and after the effective date of the amendment and limited transaction fees associated with debt restructurings.

Third Amended and Restated Engagement Letter dated October 7, 2020

13. On June 20, 2018—several months after the amended and restated engagement letter was entered into—the Puerto Rico Electric Power System Transformation Act (Act 120) was enacted. It established a framework for the transfer of the assets, operations, functions and services of PREPA, including a transaction under which operations of the transmission and distribution (“T&D”) system would be assumed by a private manager.

14. On April 11, 2019, the Puerto Rico Energy Public Policy Act (Act 57) was enacted. It required the unbundling of the electric system through the transfer of operation and maintenance responsibilities of the T&D and generation systems to private operators.

15. The Government of Puerto Rico accordingly pursued the T&D and generation systems separately, and also determined to seek to consummate the T&D component first.

16. On January 11, 2020, LUMA Energy³ was selected to engage the Puerto Rico Public-Private Partnerships Authority (“P3 Authority”) in negotiations pursuant to Act 120; and a T&D contract was executed June 22, 2020, under which LUMA Energy operates and maintains the T&D system.

³ Defined in the plan as LUMA Energy, LLC, a joint venture between Quanta Services and Canadian Utilities Limited, an ATCO Ltd. Company, and LUMA Energy ServCo, LLC, its subsidiary.

17. Based on the separation of transactions Citi and the Board determined to restructure the transaction fee for Services associated with PREPA Transaction(s), by bifurcating it into T&D and generation system components. A true copy of the resulting third amended and restated engagement dated October 7, 2020, is attached as Exhibit 7.

18. \$13,975,000 (65%) of the total fee was allocated to the T&D component (§4(a)), and the \$7,525,000 (35%) balance was allocated to the generation system component (§4(b)).

19. The split was intended to reflect differences in the relative complexity of the respective transactions and differences in operations size.

20. As to the T&D component, \$9,083,750 (65% of the \$13,975,000 component) became payable upon entry of an order “allowing all accrued and unpaid ‘front-end transition’ obligations of the Company to LUMA Energy LLC, and LUMA Energy ServCo LLC as an administrative expense” and the \$4,891,250 (35%) balance is payable upon the PREPA plan effective date.⁴

21. The split was intended to compensate Citi for work performed in structuring the T&D transaction, with a sizeable holdback payable after all conditions precedent are satisfied (the last of which is plan consummation).

22. As to the generation system component, §4(b) provides for the \$7,525,000 balance to be payable upon the closing of “a Transaction or Transactions relating to the electric power

⁴ The referenced order in §4(a) was entered October 19, 2020. (ECF Doc. #14609.) In the status report filed June 27, 2023 the Board proposed (ECF Doc. #24675-1) that confirmation proceedings commence mid-October.

generation assets of the Company”, defined as a “Generation Transaction.”⁵ Given the potential at the time for multiple legacy generation system transactions, ¶4(b) provided that if multiple such transactions were executed this component would be pro-rated.

Fourth Amended and Restated Engagement Letter dated October 12, 2021

23. Citi and the Board entered into a fourth amended and restated engagement letter dated October 12, 2021, a true copy of which is attached as Exhibit 8.

24. The amendment extended the term of the agreement until June 20, 2023, which otherwise would have expired February 27, 2022. It did not modify the fee provisions.

Fifth Amended and Restated Engagement Letter dated September 1, 2022

25. After execution of the fourth amended and restated engagement letter, the Board adopted a resolution designating Citi lead negotiator, under the *Order Concerning Continuation of PREPA Mediation* entered September 20, 2022 (ECF Doc. #22313), to facilitate the mediation team and other parties’ interaction with the Board, and also asked Citi to provide additional services relating to potential privatization of Puerto Rico Highways and Transportation Authority (“HTA”) toll roads.

26. Citi agreed, and they accordingly entered into a fifth amended and restated engagement letter dated September 1, 2022, a true copy of which is attached as Exhibit 9.

27. The amendment expanded scope of “Services” provided under ¶6, which were previously limited to PREPA (and which is quoted above at ¶9), to also cover HTA, by modifying the operative provision as follows (changes in bold/underline):

⁵ The Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement dated January 24, 2023 (“OMA”) among PREPA, the P3 Authority and Genera PR LLC provides for the transition of control over PREPA’s legacy generation assets to Genera. The handover (“Service Commencement Date” under the OMA) is expected to occur June 30, 2023.

Citi will perform such strategic advisory and investment banking services for the Board as are customary and appropriate in identifying, evaluating and/or implementing various strategic or financial alternatives for the Company **and the Toll Roads (including advise on the structure, negotiation strategy, valuation analyses and other financial matters, and along with the Company's and Puerto Rico Highways and Transportation Authority ("HTA") and other advisors, on solutions that support grid resiliency and environmental sustainability)** that the Board reasonably requests (collectively, the "Services"). Such Services **with respect to the Company** will include providing advice on the structure and terms of a long-term concession agreement involving the Company's power transmission and distribution assets as well as providing advice in connection with a potential "privatization" involving the Company's power generation assets (each of which, for clarity, shall be deemed to constitute a "Transaction," collectively "Transactions," as defined below). **Such Services with respect to the HTA Toll Roads will include providing advice on the structure and terms of a long-term concession agreement involving the HTA Toll Roads as well as providing advice in connection with a potential "privatization" involving the HTA Toll Roads.**

28. With regard to fees for additional HTA-related services, the amendment included an additional paragraph⁶ providing:

5. Commencing on the date of the Fifth Amended Agreement and continuing until termination of this Fifth Amended Agreement, in connection with the Services with respect to the HTA Toll Roads, an additional fixed monthly retainer of \$275,000 payable monthly in arrears (upon the submission of monthly invoices). In addition, Citi shall be entitled to (a) an amount equal to \$1 million payable on June 30, 2023, such payment being contingent on the request for proposals to finance, operate, maintain and improve the HTA Toll Roads going out to short-listed concession proponents and (b) an amount equal to \$7 million payable 30 days after transaction close, defined as the date of execution of a concession agreement involving the HTA Toll Roads, such payment being contingent on the occurrence of said transaction close. The fixed monthly retainer of \$275,000

⁶ As noted above, ¶¶1-2 provided for payment of monthly and transaction fees for PROMESA-related debt restructurings, and ¶¶3-4 provided for payment of monthly and transaction fees for PREPA-related restructurings.

and the contingent payment of \$1 million shall be creditable against the \$7 million contingent payment.

29. Said fees were based on those charged by the Puerto Rico Government Advisors (not known to Citi), the prior analysis having been done by the Board as part of other transactions and the amount of work and expertise Citi was bringing to the table to ensure greater success of the transaction.

Compliance with Order

30. The foregoing describes the circumstances under which, and the process by which, Citi and the Board agreed to the PREPA transaction fee provisions in the third amended and restated engagement letter.

31. To the best of my knowledge, information and belief, formed based on my personal knowledge and discussions with Citi employees working on this engagement, (a) this declaration attaches all materials provided to the Board to substantiate the amount of the PREPA transaction fees and/or to establish the event(s) that would trigger payment of the same and (b) no materials were received from the Board to substantiate the amount of said fees or to establish the payment-triggering event(s).

Certification Pursuant to Rule 2016 and P.R. LBR 2016-1(a)(4)

32. I have read the accompanying amended application.

33. To the best of my knowledge, information and belief formed after reasonable inquiry, the \$9,083,750 transaction fee as to which interim allowance is sought conforms with the Bankruptcy Code, the Bankruptcy Rules, the United States Trustee Guidelines and the Puerto Rico Local Bankruptcy Rules.

34. The requested compensation was billed at rates no less favorable to the Debtors than those customarily employed by Citi generally.

35. No agreement or understanding exists between Citi and any other person for sharing compensation received or to be received in connection with this engagement, except as authorized by the Bankruptcy Code or Rules.

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 30, 2023.

/s/ John Gavin
John Gavin
Managing Director